

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

WSOU INVESTMENTS, LLC, d/b/a BRAZOS
LICENSING AND DEVELOPMENT,
Plaintiff,

v.

HEWLETT PACKARD ENTERPRISE
COMPANY,
Defendant.

Civil Action No.

6:20-cv-00729-ADA

**HEWLETT PACKARD ENTERPRISE COMPANY'S
PROPOSED CLAIM CONSTRUCTIONS**

Pursuant to the Court's Order, Dkt. No. 23, Defendant Hewlett Packard Enterprise Company ("Defendant" or "HPE"), by and through its counsel, hereby serves these Preliminary Proposed Constructions on Plaintiff WSOU Investments, LLC ("Plaintiff"). HPE reserves the right to amend, modify, change, add, and/or delete claim terms and constructions based on the terms disclosed and constructions offered by Plaintiff. HPE also reserves the right to supplement, amend, or otherwise modify these Proposed Claim Constructions consistent with the Court's Scheduling Order and any applicable rules. HPE further reserves the right to argue in the alternative that these terms are indefinite, and/or that these terms are indefinite and/or lack written description depending on how Plaintiff proposes to construe them and/or they are ultimately construed by the Court.

Subject to the foregoing, HPE submits that the following terms should be construed and/or are indefinite as indicated below. Identification of an asserted claim includes all claims that depend therefrom, whether or not the limitation(s) added by the dependent claim expressly recite the term. The disclosure of a proposed construction below does not imply that the construction differs from the term's plain and ordinary meaning in the context of the patent. HPE reserves all rights to support its proposed constructions through arguments based on plain meaning, special definitions, disclaimers, and all other applicable bases for construction of claim terms.

U.S. Patent No. 7,646,729 Asserted Claims: <u>1</u>, <u>3</u>, <u>5</u>, <u>6</u>, <u>7</u>, <u>12</u>, <u>13</u>, <u>15</u>, <u>17</u>, <u>18</u>, <u>19</u>, <u>24</u>		
Claim(s)	Claim Terms, Phrases, or Clauses	Proposed Construction
1, 13	a sniffer	Computer hardware or software, connected to a central location of the network, that can intercept and log traffic flowing through a network without affecting the traffic or network characteristics, and which is not a network node, is not known to or detectable by other network elements, can be removed without directly affecting the network topology, and does not manage any aspect of the network
1, 7, 13, 19	link status messages / link state messages	Indefinite
1, 13	inner nodal area	central ring of nodes connected to an element management system
1, 13	outer nodal area[s]	ring of nodes that shares only one node with said inner nodal area, and does not share any nodes with any other outer ring
1, 13	adapting a sniffer to collect information from nodes ... by configuring the sniffer as a partition designated inner nodal-area node	In the interest of conserving judicial resources and to comply with the local rules, after further consideration, HPE believes this term does not require a construction.
1, 13	configuring the sniffer as a partition designated inner nodal-area node of the [first / second / remaining] outer nodal area;	employing the Repairs of Partition Areas feature of ISO/IEC 10589:2001 to create a virtual outer ring adjacency to receive link state messages from all nodes in the [first / second / remaining] outer nodal area

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Respectfully submitted,

By: /s/ Michael R. Franzinger

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**COUNSEL FOR DEFENDANT
HEWLETT PACKARD ENTERPRISE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **HEWLETT PACKARD ENTERPRISE COMPANY'S PROPOSED CLAIM CONSTRUCTIONS** was served on the following parties this 16th day of February 2021, in the manner indicated below:

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